

§ 274a.7

8 CFR Ch. I (1–1–08 Edition)

period of time provided in paragraph (c)(4)(iv) of this section.

(g) *State employment agency verification requirements in the case of an individual who was previously referred and certified.* When a state employment agency refers an individual for whom the verification requirements have been previously complied with and a Form I-9 completed, the agency shall inspect the previously completed Form I-9:

(1) If, upon inspection of the Form, the agency determines that the Form I-9 pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I-9 need be completed prior to issuance of a new certification *provided* that the individual is referred by the agency within 3 years of the execution of the initial Form I-9.

(2) If, upon inspection of the Form, the agency determines that the Form I-9 pertains to the individual but that the individual does not appear to be authorized to be employed in the United States based on restrictions, expiration dates or other conditions annotated on the Form I-9, the agency shall not issue a certification unless the agency follows the updating procedures pursuant to § 274a.2(b)(1)(vii) of this part; otherwise the individual may no longer be referred for employment by the state employment agency.

(3) For the purposes of retention of the Form I-9 by a state employment agency pursuant to paragraph (e) of this section, for an individual previously referred and certified, the state employment agency shall retain the Form for a period of 3 years from the date that the individual is last referred and hired.

(h) *Employer verification requirements in the case of an individual who was previously referred and certified.* When an employer rehires an individual for whom the verification and certification requirements have been previously complied with by a state employment agency, the employer shall inspect the previously issued certification.

(1) If, upon inspection of the certification, the employer determines that the certification pertains to the individual and that the individual remains

authorized to be employed in the United States, no additional verification need be conducted and no new Form I-9 or certification need be completed *provided* that the individual is rehired by the employer within 3 years of the issuance of the initial certification, and that the employer follows the same procedures for the certification which pertain to Form I-9, as specified in § 274a.2(c)(1)(i) of this part.

(2) If, upon inspection of the certification, the employer determines that the certification pertains to the individual but that the certification reflects restrictions, expiration dates or other conditions which indicate that the individual no longer appears authorized to be employed in the United States, the employer shall verify that the individual remains authorized to be employed and shall follow the updating procedures for the certification which pertain to Form I-9, as specified in § 274a.2(c)(1)(ii) of this part; otherwise the individual may no longer be employed.

(3) For the purposes of retention of the certification by an employer pursuant to this paragraph for an individual previously referred and certified by a state employment agency and rehired by the employer, the employer shall retain the certification for a period of 3 years after the date that the individual is last hired, or one year after the date the individual's employment is terminated, whichever is later.

[52 FR 43053, Nov. 9, 1987]

§ 274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986.

(a) The penalty provisions set forth in section 274A (e) and (f) of the Act for violations of sections 274A(a)(1)(B) and 274A(a)(2) of the Act shall not apply to employees who were hired prior to November 7, 1986, and who are continuing in their employment and have a reasonable expectation of employment at all times (as set forth in § 274a.2(b)(1)(viii)), except those individuals described in section 274a.2(b)(1)(viii)(A)(7)(iii) and (b)(1)(viii)(A)(8).

Department of Homeland Security

§ 274a.9

(b) For purposes of this section, an employee who was hired prior to November 7, 1986 shall lose his or her pre-enactment status if the employee:

(1) Quits; or

(2) Is terminated by the employer; the term termination shall include, but is not limited to, situations in which an employee is subject to seasonal employment; or

(3) Is excluded or deported from the United States or departs the United States under a grant of voluntary departure; or

(4) Is no longer continuing his or her employment (or does not have a reasonable expectation of employment at all times) as set forth in § 274a.2(b)(1)(viii).

[52 FR 16221, May 1, 1987, as amended at 53 FR 8613, Mar. 16, 1988; 55 FR 25935, June 25, 1990; 56 FR 41786, Aug. 23, 1991]

§ 274a.8 Prohibition of indemnity bonds.

(a) *General.* It is unlawful for a person or other entity, in hiring or recruiting or referring for a fee for employment of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this part relating to such hiring, recruiting, or referring of the individual. However, this prohibition does not apply to performance clauses which are stipulated by agreement between contracting parties.

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of \$1,000 for each violation before September 29, 1999, and \$1,100 for each violation occurring on or after September 29, 1999, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

[52 FR 16221, May 1, 1987, as amended at 64 FR 47101, Aug. 30, 1999]

§ 274a.9 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* The Service may conduct investigations for violations on its own initiative and without having received a written complaint. When the Service receives a complaint from a third party, it shall investigate only those complaints that have a reasonable probability of validity. If it is determined after investigation that the person or entity has violated section 274A of the Act, the Service may issue and serve a Notice of Intent to Fine or a Warning Notice upon the alleged violator. Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated.

(c) *Warning notice.* The Service and/or the Department of Labor may in their discretion issue a Warning Notice to a person or entity alleged to have violated section 274A of the Act. This Warning Notice will contain a statement of the basis for the violations and the statutory provisions alleged to have been violated.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274A of the Act is commenced when the Service issues a Notice of Intent to Fine on Form I-763. Service of this Notice shall be accomplished pursuant to part 103 of this chapter. The person or entity identified in the Notice of Intent to Fine shall be